

DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, Judge

CA06-576

FEBRUARY 14, 2007

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION,
[NO. F209409]

CHRISTOPHER M. CHILDERS
APPELLANT

V.

GEORGIA-PACIFIC CORPORATION
AND SEDGWICK CLAIMS
MANAGEMENT SERVICES
APPELLEES

AFFIRMED

Christopher Childers appeals a decision of the Workers' Compensation Commission that denied his request for additional benefits regarding an admittedly compensable injury to his right shoulder. Childers sustained the injury while working for appellee Georgia-Pacific Corp. on June 7, 2002, when a blow he struck with a sledgehammer went sideways and he held on to avoid hitting a co-worker. Georgia-Pacific paid medical benefits until July 28, 2002, but it controverted all benefits Childers claimed after he was in an automobile accident on that date.

At a hearing before the administrative law judge in April 2005, Childers contended that he was entitled to additional medical treatment, temporary total disability benefits, permanent partial disability benefits, and benefits under Ark. Code Ann. § 11-9-505 (which

allows penalties if an employer without reasonable cause refuses to return an injured employee to work when suitable employment is available). Georgia-Pacific contended that Childers sustained an additional injury to his right shoulder in the vehicular accident, unrelated to his work injury, and that the injury served as an independent intervening cause discharging Georgia-Pacific from liability for any additional benefits after July 28, 2002. The law judge denied all controverted claims, finding that Childers had failed to prove a causal connection between his original compensable injury and his shoulder condition, surgery, and related treatment after July 28, 2002. In a decision of February 10, 2006, the Workers' Compensation Commission affirmed and adopted the decision of the law judge.

Childers now appeals the Commission's decision, raising five points. He challenges the Commission's findings that he failed to prove by a preponderance of the evidence (1) that there was a causal connection between his compensable injury and his shoulder condition, surgery, and related treatment after July 28, 2002; (2) that additional medical treatment was reasonably necessary in connection with the compensable injury; (3) that he was entitled to temporary total disability benefits subsequent to July 28, 2002; (4) that he was entitled to benefits under Arkansas Code Annotated § 11-9-505(a); and (5) that he was entitled to permanent partial disability benefits. We affirm the Commission's decision.

At the outset, we direct both parties to our well-settled standard of review:

When reviewing a decision of the Arkansas Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom

in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. *Cooper Tire & Rubber Co. v. Angell*, 75 Ark. App. 325, 58 S.W.3d 396 (2001). Substantial evidence is that relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The issue is not whether this court might have reached a different result from the Commission; the Commission's decision should not be reversed unless it is clear that fair-minded persons could not have reached the same conclusions if presented with the same facts. *Horticare Landscape Management v. McDonald*, 80 Ark. App. 45, 89 S.W.3d 375 (2002); *Wheeler Constr.*, *supra*. When a claim is denied because a claimant failed to show entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires that we affirm if a substantial basis for the denial of relief is displayed by the Commission's opinion. *Marshall v. Madison County*, 81 Ark. App. 57, 98 S.W.3d 452 (2003).

Parker v. Atlantic Research Corp., 87 Ark. App. 145, 151, 189 S.W.3d 449, 452–53 (2004).

Applying the proper standard of review to the present case, we now review the evidence in the light most favorable to the Commission's findings. Like the Commission, we discuss the first two points together.

Causal Connection and Additional Benefits

Childers first challenges the Commission's finding that he failed to prove a causal connection between his original compensable injury and his shoulder condition, surgery, and related treatment after July 28, 2002; he asserts that his shoulder condition subsequent to that date was a natural and probable consequence of his compensable injury of June 7, 2002. Second, Childers challenges the Commission's finding that additional medical treatment was not reasonably necessary in connection with his compensable injury.

When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for any natural consequence that flows from that

injury, and the basic test is whether there is a causal connection between the injury and the consequences of such. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002). Benefits shall not be payable, however, for “a condition which results from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment.” Ark. Code Ann. § 11-9-102(4)(F)(iii) (Supp. 2005). The nonwork-related independent intervening cause does not require negligence or recklessness on the part of a claimant. *Id.*

As a general rule, an injured employee may recover compensation for a new injury, or an aggravation of his injury, where there is no independent cause to break the chain of causation between the new injury, or aggravation, and the original injury. *Air Compressor Equip. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). Whether there is a causal connection is a question of fact for the Commission. *Id.* Our workers’ compensation law provides that an employer shall provide the medical services that are reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Repl. 2002); *Fayetteville Sch. Dist. v. Kunzelman*, 93 Ark. App. 160, --- S.W.3d ---- (2005). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Id.* It is the province of the Commission to weigh conflicting medical evidence, and the resolution of conflicting evidence is a question of fact for the Commission. *Id.*

Evidence before the Commission on the issue of causation included medical records before and after the automobile accident, testimony by Childers, and the deposition testimony of Dr. John Lytle.¹ The Commission found that Childers's testimony significantly conflicted with the medical records, noting that three medical professionals recorded a worsening of Childers's symptoms after his automobile accident but that Childers denied telling any physician that the accident had aggravated his shoulder injury. The Commission found Childers not to be a credible witness, given "these multiple, serious conflicts" between his testimony and the other evidence of record.

Recognizing that a physical therapist documented popping and on-going shoulder problems before Childers was in the automobile accident, the Commission noted that Dr. Lytle reported both crepitus and "significant" popping afterwards. The Commission noted that a radiologist interpreted Childers's x-rays before the accident as showing a possible tear but that Dr. Lytle interpreted them as normal; that multiple medical providers recorded Childers's saying that his shoulder condition was aggravated by the accident; and that Dr.

¹The medical records before us appear only in a supplemental Addendum prepared by Georgia-Pacific. Rule 4-2(a)(8) of the Rules of the Supreme Court allows appellee to "prepare a supplemental Addendum if material on which the appellee relies is not in the appellant's Addendum."

We direct appellant's counsel to the requirement that "appellant's brief shall contain an Addendum which shall include . . . exhibits essential to an understanding of the case." Ark. Sup. Ct. R. 4-2(a)(8). Further, we remind him that reference in the argument portion of the brief "shall be followed by a reference to the page number of the abstract or Addendum at which such material may be found." Ark. Sup. Ct. R. 4-2(a)(7).

Lytle, after learning of other medical records, withdrew his previous opinion of causation between the compensable injury and the shoulder condition after the accident.

The Commission found that the medical evidence was too ambiguous to support a finding of a causal connection and, again noting that Childers's testimony was not credible, it concluded that he had failed to prove a causal connection between his original compensable injury and his shoulder condition, surgery, and related treatment after July 28, 2002. Therefore, the Commission found that Childers also had failed to prove that additional medical treatment was reasonably necessary in connection with the compensable injury. We hold that the medical records after July 28, 2002 and the testimony of Childers, deemed by the Commission not to be credible, constitute substantial evidence that Childers failed to prove a causal connection to his original injury and therefore was not entitled to additional medical treatment after his automobile accident of July 28, 2002.

Temporary Total Disability Benefits

As his third point on appeal, Childers challenges the Commission's finding that he failed to prove entitlement to temporary total disability benefits subsequent to July 28, 2002. Based upon its finding that Childers had failed to prove a causal connection between his original compensable injury and his shoulder condition, surgery, and related treatment after July 28, 2002, the Commission found that he did not remain in his healing period after July 28. Therefore, the Commission found that Childers failed to prove entitlement to temporary total disability benefits after that date.

In order to be entitled to temporary total disability benefits, an injured employee must prove that he remained within his healing period and that he suffered a total incapacity to earn wages. *Ark. State Hwy. Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981); *Palazzolo v. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W.2d 938 (1994). The healing period does not end until the claimant's condition is stable and nothing further in the way of treatment will improve his condition. *Id.* Without an initial finding of compensability, a claimant cannot be awarded temporary total disability benefits or additional medical treatment. *Cross v. Magnolia Hosp. Reciprocal Group of Am.*, 82 Ark. App. 406, 109 S.W.3d 145 (2003). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Breakfield v. In & Out, Inc.*, 79 Ark. App. 402, 88 S.W.3d 861 (2002). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended; conversely, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *Id.*

We hold that the absence of a causal connection between Childers's compensable injury and his shoulder condition, surgery, and related treatment after July 28, 2002, constitutes substantial evidence to support the Commission's finding that Childers did not remain in his healing period after that date. Because the healing period did not continue after July 28, Childers was not entitled to temporary total disability benefits after that date.

Childers contends that he was entitled to benefits under Arkansas Code Annotated section 11-9-505(a)(1). The statute reads, in pertinent part:

Any employer who without reasonable cause refuses to return an employee who is injured in the course of employment to work, where suitable employment is available within the employee's physical and mental limitations, upon order of the Workers' Compensation Commission, and in addition to other benefits, shall be liable to pay to the employee the difference between benefits received and the average weekly wages lost during the period of the refusal, for a period not exceeding one (1) year.

Ark. Code Ann. § 11-9-505(a)(1) (Repl. 2002). An injured employee who is no longer receiving benefits for his compensable injury cannot qualify for additional benefits under section 11-9-505. *Davis v. Dillmeier Enters., Inc.*, 330 Ark. 545, 956 S.W.2d 155 (1997).

The Commission noted evidence that Dr. Lytle released Childers to return to regular-duty work but that Childers chose not to return to work because of his subjective view of his own limitations. Based upon this evidence and upon the Commission's finding that Childers was not a credible witness, the Commission found that he had not proven that Georgia-Pacific refused to return him to a suitable position. We hold that the evidence cited by the Commission constitutes substantial evidence to support this finding and the related finding that Childers was not entitled to benefits under the statute.

Permanent Partial Disability Benefits

The Commission noted that, although Childers's attorney stated at the hearing before the law judge his belief that Dr. Lytle mentioned a specific impairment rating, there was no written evidence that any physician ever assigned an impairment rating in this case. Therefore, the Commission found that Childers failed to prove entitlement to permanent

partial disability benefits. Alternatively, the Commission found that, even if Childers had introduced an impairment rating into evidence, he had failed to prove that his compensable injury was the major cause of his disability or impairment.

Childers asserts, with no reference to his abstract or addendum, that he was unable to obtain evidence of the impairment rating by the time of the hearing and that he attempted to reserve the issue at the hearing's end. He contends that this court must set aside the Commission's decision with regard to an impairment rating so that it can be properly litigated. We will not address this argument because we do not consider assignments of error that are unsupported by convincing authority. *Jones Truck Lines v. Pendergrass*, 90 Ark. App. 402, 206 S.W.3d 272 (2005).

Alternatively, Childers contends that he "clearly sustained a significant permanent physical impairment as a result of his June 7, 2002 compensable injury." Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a) (Supp. 2005). Georgia-Pacific points out that on February 13, 2003, Dr. Lytle released Childers to full-duty work without restrictions and opined that he had reached maximum medical improvement of 100 percent. This constitutes substantial evidence to support the Commission's finding that Childers failed to prove that his compensable injury was the major cause of his disability or impairment.

In summary, substantial evidence supports the five findings that Childers challenges on appeal. We therefore hold that the Commission's decision displays a substantial basis for the denial of his claim.

Affirmed.

GLADWIN and BAKER, JJ., agree.